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ANTI-AMERICANISM AND SOLDIERS OVERSEAS

by

Buel W. Patch

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ANTI-AMERICANISM AND SOLDIERS OVERSEAS

WHEN THE SUPREME COURT hands down its opinion in the Girard case, probably not later than July 15, the ruling is almost certain to inflame public opinion either in Japan or in the United States. As soon as the government on June 4, following a special review, reaffirmed its earlier decision to waive criminal jurisdiction over Army Specialist 3/c William S. Girard, who was accused of having accidentally caused the death of a Japanese woman last winter, suit was entered on his behalf in the federal courts. District Judge Joseph C. McGarraghy held, June 18, that Girard's constitutional rights would be infringed if he were turned over to Japan for trial in the civil courts of that country.

The Supreme Court, which usually adjourns for the summer before the middle of June, agreed to prolong its term to hear oral argument, July 8, on a direct appeal from the district court's decision. If the high court upholds Judge McGarraghy, there may be widespread anti-American outbursts in Japan, where demand for trial of Girard by the Japanese is strong; such a ruling also might interfere with smooth operation in the future of agreements for handling criminal cases involving American servicemen in Japan and in numerous other countries. On the other hand, if the Supreme Court reverses the judgment of the lower court, there will be loud protests in this country and strengthening of demands in Congress for abrogation or revision of the so-called status-of-forces agreements.

At issue is the question of whether Girard's offense was or was not committed in performance of official duty; if the former, he would normally be subject, under the agreement with Japan, to trial by court-martial, and if the latter to trial by Japan's courts. When the State and Defense departments jointly announced, June 4, confirmation of the decision to waive jurisdiction, they said that any attempt to prolong the jurisdictional issue would create a situation

which "could basically affect United States relations not only with Japan but also with many other nations."

Between May 16, when it was first agreed to waive jurisdiction to Japan; and the day nearly three weeks later when the decision was reaffirmed, the American embassy in Formosa was wrecked by mobs protesting the acquittal by a U.S. court-martial of a sergeant who had killed a Chinese Peeping Tom. The Formosa rioting on May 24 surpassed in destructiveness any outbreak of the sort directed against Americans in recent times, and it occurred in a place which had been particularly favored in the dispensing of military and economic aid. For those reasons the incident seemed to give dramatic warning that the United States might be facing similar and possibly more severe flare-ups elsewhere if it failed to move warily in touchy situations.

RELATIONS OF AMERICANS OVERSEAS WITH FOREIGNERS

Both Secretary of State Dulles and Secretary of Defense Wilson pointed out, immediately after the Formosa incident, that relations between Americans stationed overseas and the local populations constituted a problem of global dimensions. Wilson told the Senate Foreign Relations Committee, May 28, that it was "a problem all over the world and proper handling is a difficult diplomatic matter." At a press conference the following day Dulles also said that "This is a very, very difficult problem—a world-wide problem—and we have to find better ways than we have yet found to cope with it."

President Eisenhower, responding June 5 to a news conference question on the Girard case, said: "One of the most irritating things that one nation can do is to have its own troops stationed in the territory of a friend. It gives rise to all sorts of difficulties, and it creates dissension at home when people believe that their sons should always be tried solely by the courts of their own nation." Philippine Ambassador Carlos P. Romulo had told a New York audience, May 26; that resentment against Americans was "spreading wherever the United States has military bases in the Far East," and that the core of the resentment was the reluctance of Americans to let servicemen overseas be tried before local courts. Romulo added:

We in Asia recall with gratitude and admiration that it was the United States that pioneered in exposing, denouncing, and opposing the extraterritoriality rights in China. It is therefore difficult

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for Asians to understand why America should now insist in denying court jurisdiction to civil authorities for its soldiers. To us, court jurisdiction is part and parcel of our national sovereignty, and specially to peoples newly liberated national sovereignty is sacrosanct. Anything that violates it arouses the resentment of the people.

The United States now has troops, foreign aid administrators, technical experts, or U.S. Information Agency personnel stationed in large or small numbers in almost every country in the world. The problem of maintaining friendly relations between the Americans abroad and the peoples among whom they live is naturally hardest where the Americans are present in force and where racial differences, differences in customs, and differences in economic status make the visitors the more conspicuous. However, elements likely to generate occasional outbursts of ill feeling exist everywhere. Whether grievances lead only to individual protests or blossom into mass demonstrations or violent riots may depend as much on the temperament of the people involved as upon the depth and extent of the provocation in a particular instance.

ANTI-AMERICAN DEMONSTRATIONS IN THE FAR EAST

Mass demonstrations against American acts or policies have been confined for the most part to the Far East. Artillery practice by U.S. forces at a range on the slopes of Mount Fuji in the spring of 1955, for example, brought sitdown protests by crowds of Japanese living in the vicinity. Violent clashes between police and demonstrators followed in the autumn of that year at the climax of a campaign by the people of the village of Sunakawa, in Greater Tokyo, to prevent requisitioning of land for additions to the Tachikawa air base.

Sunakawa reportedly wanted to keep its protest free of anti-American aspects—more than one-half of its working population had jobs at the base—but when it called on organized labor for support, “a well-defined anti-Americanism came to the fore.” The unions grasped the opportunity “to arouse public opinion throughout the country against the granting of bases and the continuing presence of American troops.”¹

There have been similar incidents in the vicinity of other

¹ Kitani Tadaaki, “Attitudes Toward America,” *Japan Quarterly*, January-March 1956, pp. 27-32.

air bases in Japan; but Sunakawa has been the focal point for such protests. Plans to extend the Tachikawa runways to accommodate jet planes resulted in new disorders last year, and landowners, unionists, and leftist students staged a "Yankee go home" demonstration there at the end of June this year. Opposition to taking of land for air base expansion has caused the same trouble in American-occupied Okinawa.²

What happened in Taipei, capital of Taiwan or Formosa, on May 24 was far more serious than anything that has yet occurred in Japan or in other countries playing host to Americans. A mob estimated to number 3,000 persons swarmed into the embassy compound and the embassy building itself, broke windows and furniture, scattered documents, and tore down the American flag; the building of the U.S. Information Agency also was wrecked and the home of the U.S. military attache was stoned; a dozen Americans and several score Chinese were injured and one Chinese lost his life.

The trouble started when the widow of the Chinese killed by the American sergeant appeared in front of the embassy and gave a recorded interview to a Chinese radio reporter. When the interview was played back by loud speaker to the gathering crowd, someone threw a stone and the crowd quickly turned into a destructive mob. Order was not fully restored until martial law had been declared and more than 30,000 Chinese Nationalist troops had been moved into the city.

UNFAVORABLE REACTIONS IN OTHER PARTS OF WORLD

Anti-American feeling in other parts of the world has been manifested as a rule in more restrained ways. Germans became considerably exercised last July over a series of rape, robbery, and homicide cases involving American servicemen. Protests took the form, not of riots or demonstrations, but of an official request by a Bavarian city council for withdrawal of the troops stationed nearby; there were also press attacks and numerous demanding letters to American officials. The excitement passed, however, upon imposition of restrictions on soldier passes, strengthening of military and civilian police patrols, and general realization by the German public that it was necessary to get along with the Americans.

² See "Future of Overseas Bases," *E.R.R.*, Vol. I 1957, pp. 73-74.

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Anti-Americanism, fed in other countries as well as Germany by the presence of large numbers of U.S. servicemen, was swelled in France and England last year by policy differences over North Africa and the Middle East. The French were annoyed by the anti-colonial professions of the United States and by this country's reluctance to support France all the way in Algeria. American leadership in the United Nations of the opposition to the Anglo-French invasion of Egypt was deeply resented in both England and France. But there were no popular demonstrations; the resentment was expressed in speeches of politicians, in newspaper editorials, and in sharp comments by the man in the street.

Reasons for Prevailing Anti-Americanism

ANYONE WHO STOPS TO THINK what it would be like to have foreign troops stationed in thousands or tens of thousands all over the United States will not find it hard to understand why the people of England, France, Germany, Japan, Formosa, and other countries are not always happy at having large numbers of American servicemen in their midst. To entertain one's friends or a congenial stranger or two for a few days is pleasant and rewarding. When the guests stay for years, when they speak a different language, are accustomed to different ways, and show little interest in their new surroundings, there are inevitably times when they come to seem unbearable.

The situation is the more difficult in countries like Germany and Japan, which the Americans entered originally as conquerors and occupiers. Although friendly relations have been restored, and the troops now are on mutual defense duty, their continued presence is a steady reminder of past humiliation. Even in the lands of war allies, the posting of American forces affects national pride in the sense that it shows up the country's loss of ability to defend itself unaided.

Such considerations aside, it is irksome to any people to have foreigners in uniform in their towns and cities in great numbers in time of peace. It is all the worse if they have more money to spend than the general run of people.

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Soldiers abroad, moreover, are sure to have spells of homesickness and boredom. No matter how well most of them behave as a rule, some are bound to drink too much on leave and get into ruckuses. Such conduct may be tolerated for a long time, but piling up of annoyances makes conditions ripe for a violent anti-American outburst when a really serious offense is committed.

A problem common to armies the world over is that posed by prostitutes and less professional camp followers. West German officials estimated a year ago that Americans were responsible for more than 37,000 of nearly 68,000 illegitimate children fathered by Allied soldiers in Germany since 1945. Opposition to expansion of air bases in Japan has been attributed in part to the fact that "Wherever there is an American base, women of a certain type gather together in droves, and hastily improvised amusement centers spring up overnight in the most simple rustic village whenever an American camp moves in."³

Efforts by the U.S. armed services to make foreign duty palatable to officers and their families have led to provision of amenities unknown or unavailable to most of the people in whose countries they are stationed. This condition has been particularly pronounced in Germany, both because of the large number of officers and dependents involved and because severe local housing shortages made it necessary to build extensive new accommodations. U.S. Army construction in Germany has included a dozen or more housing developments which virtually match new American suburbs. The families living there naturally appear to Germans to occupy a highly privileged position. The result may be to nourish anti-American feeling, particularly if the favored Americans adopt a superior or disdainful attitude.

CONFLICTS OF MANNERS AND OF NATIONAL ATTITUDES

In England and in Western Europe any pretensions to superiority are likely to produce, not so much hurt feelings, as pained amazement that Americans should not show more respect for the ancient civilizations of their forebears. Such matters are minor, but they put barbs into day-to-day relations. After traveling 7,000 miles by automobile through Western Europe a few years ago, Bruce Hutchison, a Canadian writer, said he heard over and over "the same

³ Kitani Tadashi, "Attitudes Toward America," *Japan Quarterly*, January-March 1956, p. 30.

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dismal recital": "The Americans are ill-mannered and blundering children, their civilization is a combination of wealth, corruption, Coca-Cola, and Senator McCarthy, their government is probably leading the world to war." Hutchison pointed out that the ordinary European judged the American people by the behavior of a handful and could not penetrate "the brassy facade of fictional American life to see the hard-working, hospitable, and great-hearted people of America." Pointing up the clash of attitudes, he observed:

The Europeans are misunderstood largely because the average American regards the American way of life as the true norm and ideal state of man. He expects foreigners to grow inevitably toward this particular society with a little more experience, enlightenment and help . . . The Europeans [however] will never forgo their own ways of life, which they consider superior to any other. Before the U.S. can even begin to solve the transatlantic problem, it will have to accept the curious fact that for most of the world the American way of life will always be a curious aberration.

This really should not matter, but as one of the most penetrating minds of Britain remarked, it wounds the Americans. "We Englishmen," he explained, "never expected to be loved when we were running the show. We didn't particularly want to be. We always knew that unpopularity was the price of power. But the Americans, poor fellows, just can't bear not to be loved. It burns them right up. We won't get on together until the Americans realize that power is a lonely business."⁴

The clash of manners and attitudes, between Americans and foreigners, is heightened in Asia by racial differences and the sensitivity of Asian peoples, many of them only recently emerged from colonial status, to any appearance or hint of unequal treatment. Communist propagandists are well aware of that sensitivity and frequently seek to exploit it to the disadvantage of Americans.

COMMUNIST PROPAGANDISTS AND ANTI-AMERICANISM

Anti-Americanism cannot be blamed entirely on Communists. The dislike, jealousy, petty annoyances, or major grievances that make for ill feeling have been present in greater or less degree wherever Americans have been stationed. What the Communists have done is to rub the sore points, try to stir up latent anti-foreign sentiment, and do their best to blow up local complaints into national protests. Touchiness on the question of racial equality enabled the Reds to convince Asians that there was something

⁴ Bruce Hutchison, *Canada's Lonely Neighbor* (1954), pp. 6-22.

sinister in the fact that atomic bombs were dropped on Japanese but not on German cities, when the truth was that the first successful test of the bomb, at Alamogordo, N.M., was not made until after World War II had ended in Europe. "Yankee, go home" campaigns, which have cropped up in the Far East in connection with protests over land requisitioning, are a favorite Red technique. The anti-American angle in rural demonstrations against requisitioning seems to have been introduced or intensified when Communist-influenced labor organizations have extended their support.

An example of how efforts are made to use Japan's anti-war sentiment to promote anti-Americanism was given recently at a Communist-backed World Peace Council at Colombo, Ceylon. A Japanese professor, who is an executive of the group, said at one of its meetings on June 10 that "United States war bases in Japan constitute a solid atomic war base." He added that "The struggles of the Japanese people against the expansion of the military base at Sunakawa near Tokyo, and the struggle being waged by Okinawans aimed at their liberation from the yoke of American administrators, are only a few indications of the tragedy of the Japanese people whose country as a whole has been turned into a gigantic military base."⁵ Ten days later, 150 leftist students scuffled with police guards when they sought to demonstrate before the U.S. embassy in Tokyo against nuclear arms tests and American occupation of Okinawa and for trial of Girard in Japan's courts.

Privilege of Special Court Treatment

ONE REASON WHY some criminal cases involving American servicemen in the Far East have kicked up so much popular excitement is that the countries concerned are jealous of their judicial independence. For many years, more in the case of China than of Japan, those nations lacked the right to try foreigners for offenses against their laws. Now when a court-martial decision clashes with

⁵ A U.S.-Japanese agreement, announced June 16, provides for return to Japan of five American air bases and 24 American radar stations between now and 1960.

native concepts of justice,⁶ or there is disagreement over jurisdiction in a case where circumstances have produced a demand for trial of an offender in the local civil courts, the situation acts as a reminder of the days of extraterritoriality.

REGIME OF CAPITULATIONS AND CONSULAR COURTS

The now outmoded system whereby foreign consuls in certain countries exercised civil and criminal jurisdiction over fellow nationals in those countries had its origin in immunities granted centuries ago on the theory that law was personal, that an individual was entitled to be judged by the law of his own country wherever he might go. The system reached a broad stage of development in the so-called regime of the capitulations in the Ottoman Empire, where local law was "grounded in religious principles and social usages profoundly alien to Christians and, in fact, reserved to Moslems."⁷ Under such circumstances it was convenient to let foreigners settle disputes among themselves by their own laws, and to do so was not regarded as a derogation of sovereignty.

Under treaties between Turkey and the western powers, including an agreement concluded with the United States in 1830, "The essential features of the capitulations were that in lawsuits involving foreigners the foreign consul had jurisdiction, and in suits between foreigners and natives what was in effect a mixed tribunal had jurisdiction." As time went on, however, the capitulations made possible "a status of practical immunity of foreigners from all local jurisdiction and thus constituted a flagrant encroachment upon the sovereignty of Turkey."⁸

Turkey abrogated the capitulations unilaterally at the outbreak of World War I, and their demise was finally recognized by the treaty powers in the Treaty of Lausanne in 1923. Extraterritorial rights continued to be claimed for a time in certain Mediterranean lands. Consular courts were abolished in Egypt in 1937, but the system of Egyptian mixed courts—instituted in 1875 to exercise jurisdiction in all civil and commercial litigation between foreigners and

⁶ It has been pointed out that Formosans could not understand acquittal of the sergeant who killed the Peeping Tom, for under Chinese law manslaughter of any kind calls for some punishment—at the least monetary compensation to the family of the person killed.

⁷ Philip Marshall Brown, "Capitulations," *Encyclopaedia of the Social Sciences* (Vol. III 1930), p. 213.

⁸ *Ibid.*, p. 213.

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natives—persisted until 1949.⁹ The old regime of the capitulations hung on after that only in Morocco; it was not until Oct. 6, 1956, that the United States at last relinquished the consular jurisdiction which it had held there since 1787.

CENTURY OF EXTRATERRITORIAL PRIVILEGES IN CHINA

Privileges and immunities for foreigners comparable to the Turkish capitulations were extracted from China by the "unequal" treaties which that country concluded with 19 nations following its defeat by Great Britain in the Opium War of 1840-42.¹⁰ After Japan was opened to the outside world in 1853, it also granted extraterritorial rights to foreign nations. Wide differences between the legal systems of East and West, infliction of cruel punishment, and poor prison conditions were prominent reasons for Western insistence on extraterritoriality.

By carrying out legal reforms as a part of its rapid modernization, Japan managed to free itself of special concessions to foreigners before the turn of the century. Long years of political unsettlement delayed the process in China. Beginning in 1902, several of the treaty powers in turn signified willingness to give up extraterritorial rights on the satisfactory completion of various reforms, but the reforms undertaken never seemed to go far enough.

Pleas for abolition of extraterritoriality were made by China at the Paris peace conference and the Washington arms limitation conference and in the League of Nations, but all without success. World War II finally brought a change. China was accorded at least nominal recognition as a great power, and extraterritoriality obviously was inconsistent with that status. By treaties with the Chiang Kai-shek government signed Jan. 11, 1943, the United States and Great Britain relinquished the special rights which they had held for a century. Other nations followed suit, though it was not until 1947 that the last of the treaties extinguishing extraterritoriality in China went into effect.¹¹ By that time the Nationalists were heavily engaged with the Communist forces which, two years later,

⁹ Criminal jurisdiction formerly exercised by consular courts was transferred to the mixed courts in 1937. Egyptians comprised one-third of the judges in the lower mixed courts until that year; thereafter the proportion was gradually increased to two-thirds, but foreign judges retained a two-thirds majority in the Court of Appeals. The foreign judges included several Americans.

¹⁰ China's "unequal" treaty with the United States was negotiated in 1844.

¹¹ See "Government of China," *E.R.R.*, Vol. II 1945, p. 82.

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gained full control of mainland China and made it virtually uninhabitable for foreigners.

WORLD WAR II EXEMPTIONS FROM LOCAL JURISDICTION

During World War II the equivalent of extraterritoriality was extended by foreign governments to members of the U.S. armed forces behind the lines overseas and by the U.S. government to members of foreign armed forces in training or on other duty in this country. Before the United States entered the war, limited provisions of the same sort had been granted by the United Kingdom under an agreement with the Washington government to regulate use and operation of the naval and air bases leased for 99 years in exchange for American destroyers.

The agreement entered into Mar. 27, 1941, gave the United States "the absolute right in the first instance to assume and exercise jurisdiction" over American servicemen or civilians charged with having committed, within or without a leased area, any offense relating to the security and protection of the base. Similar jurisdiction was accorded over any person other than a British subject charged with having committed an offense of any kind within a leased area. Americans charged with having committed offenses not of a security nature outside a leased area were subject in the first instance to the jurisdiction of the local British authorities.

With the United States actually in the war and preparing to send large numbers of troops overseas, on fighting missions rather than for permanent base duty, the question of handling offenders against law and order became somewhat different. Recognizing the importance of sustaining control of the military authorities at all times, Great Britain, by the United States of America (Visiting Forces) Act, 1942, completely exempted members of the American armed forces in the United Kingdom from the criminal jurisdiction of the British courts.

Bilateral agreements or orders in council made similar arrangements applicable to American servicemen in Australia, Canada,¹² China, Egypt, India, New Zealand, and some additional countries. Even in areas where no formal agreements had been concluded, servicemen in trouble were tried by courts-martial as a matter of practice. The United

¹² U.S. soldiers accused of certain crimes in Canada had to be tried in local courts until Apr. 6, 1943, when U.S. military authorities were given full jurisdiction.

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States on its side took the position that international law, as enunciated by Chief Justice Marshall in 1812,¹³ made it permissible for the courts-martial of friendly foreign forces to meet in this country and impose sentences. It thus became customary, without any special agreements or orders, to turn over on request foreign soldiers arrested by local police. Legislation enacted later (June 30, 1944) "to implement the jurisdiction of service courts of friendly foreign forces within the United States" gave statutory backing to the practices already in effect and authorized confinement of convicted foreign servicemen in federal penitentiaries.¹⁴

PURPOSE AND PROVISIONS OF STATUS-OF-FORCES PACTS

Wholesale demobilization after the war reduced the number of American troops abroad to a few hundred thousand, mostly occupation troops in Germany and Japan. The free world rearmament drive that was set off by warning signals in Europe and then by the Korean war started a new overseas movement of U.S. armed forces. American troops and dependents scattered over the globe today are believed to number altogether more than a million.

In order to avoid subjection of U.S. servicemen to local jurisdiction for all kinds of offenses, possibly including even those committed on duty, the United States at first made bilateral arrangements with various countries. When the North Atlantic Treaty came into force, it was deemed desirable to negotiate a uniform multilateral agreement to regulate the handling not only of criminal cases involving servicemen of one country stationed on the territory of another, but also of such matters as civil claims, taxes, customs duties, and the like. The result was the NATO status-of-forces treaty, signed at London on June 19, 1951, and ratified by the U.S. Senate on July 15, 1953, by a vote of 72 to 15.

The seventh of that treaty's 20 articles covers criminal jurisdiction over members of the armed forces of a NATO nation, civilian employees of the armed forces, and their immediate dependents, while in other NATO nations under orders. The treaty gives primary jurisdiction to courts-

¹³ *Schooner Exchange v. McFaddon*, 7 Cranch 116.

¹⁴ Archibald King, "Further Developments Concerning Jurisdiction Over Friendly Foreign Armed Forces," *American Journal of International Law*, April 1946, pp. 263-278.

martial in cases involving offenses committed in performance of official duty, offenses such as treason or espionage, and offenses against the person or property of another member of the same force.¹⁵ For all other offenses, including off-duty offenses against foreign nationals, primary jurisdiction lies with the civil courts of the country in which the troops are stationed. However, the treaty provides that sympathetic consideration shall be given to requests for waivers of jurisdiction. If an offender is tried in a foreign court, he is entitled to a prompt trial, legal counsel, a competent interpreter, and the protection of other safeguards. A law enacted in the United States, July 24, 1956, moreover, gave the government authority to pay court costs and counsel fees for service personnel tried in foreign courts.

Twelve countries in addition to the United States have ratified the status-of-forces treaty since 1953. Iceland, one of the two remaining NATO countries, has not ratified but a similar agreement is in force there. West Germany is expected to accede to the treaty in the near future; in the meantime, U.S. military courts have virtually exclusive jurisdiction over American personnel in Germany. An administrative agreement with Japan, effective since Oct. 28, 1953, contains provisions on criminal jurisdiction substantially the same as those of the NATO treaty. The United States has separate agreements with ten additional countries or areas.¹⁶ In countries with which no agreements have been concluded, American commanding officers or military attaches have been instructed to see that U.S. service personnel haled before local courts are given the protection of legal safeguards and furnished counsel at government expense if necessary.

RECORD OF JURISDICTIONAL AGREEMENTS IN OPERATION

Reports submitted on Apr. 9 to a Senate Armed Services subcommittee which annually reviews operation of the criminal jurisdiction provisions of status-of-forces agreements

¹⁵ Subjection of dependents to court-martial jurisdiction, at least in the case of capital crimes, was thrown into question by a Supreme Court decision on June 10. The decision voided the court-martial convictions of two Army wives for murder, one in Japan and one in England, because they had been denied the constitutional protection of trial by jury.

¹⁶ Azores, Ethiopia, Greenland, Korea, Libya, Morocco, Philippines, Saudi Arabia, Spain, Taiwan. All members of the U.S. military assistance advisory group in Taiwan, to the number of several thousand, have been granted diplomatic immunity pending negotiation of a status-of-forces agreement. Negotiations for a new agreement in the Philippines, to replace a 1947 military bases agreement, bogged down last year.

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showed that, in the 12 months from Dec. 1, 1955, through Nov. 30, 1956, a total of 14,394 offenses of a type subject to local jurisdiction were allegedly committed by U.S. personnel overseas.¹⁷ The foreign countries waived jurisdiction in two-thirds of the cases, so that only 4,437 were actually tried in foreign courts. The defendants were acquitted in 6 per cent of those cases, penalized by fine or reprimand in 87 per cent, given a suspended prison sentence in 4 per cent, and confined in less than 3 per cent. The number of persons sent to foreign prisons in the twelvemonth was 108.

Of the 88 persons still in prison last Nov. 30, 23 were serving sentences of a year or less, 53 sentences ranging from one to five years, and 12 sentences of more than five years; the offenses included murder and manslaughter, rape, robbery, larceny, burglary, aggravated assault, obstructing justice, and traffic offenses. The traffic offenses involved hit-and-run driving and severe injuries to persons. Less serious infractions of traffic regulations usually have comprised more than one-half of total offenses and more than one-half of the cases tried in foreign courts. In France last year as many as 3,000 of nearly 4,000 cases subject to local jurisdiction involved traffic violations; France waived jurisdiction in 87 per cent of the total of cases which might have been tried in its courts.

Both the Pentagon and members of Congress charged with examining operation of the status-of-forces agreements have expressed general satisfaction with the way they have worked. Monroe Leigh, Assistant General Counsel of the Defense Department, told the Senate subcommittee on Apr. 9 that "Our overall experience, both in the NATO status-of-forces countries and in the other areas of the world, has continued to indicate that with vigilant surveillance the NATO status-of-forces treaty and the similar jurisdictional arrangements constitute workable and equitable formulae for the administration of criminal jurisdiction over our forces abroad." The subcommittee gave the view in its last annual report, July 12, 1956, that "Generally the criminal jurisdiction arrangements . . . have not adversely affected the morale and discipline of our forces."

When the Senate ratified the NATO status-of-forces treaty, it provided that Senate and House Armed Services com-

¹⁷ The total covered offenses in non-agreement as well as agreement countries. The Senate subcommittee is made up of Sps. Sam J. Ervin, Jr. (D-N.C.) and Ralph E. Flanders (R-Vt.).

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mittees were to be notified (1) if a foreign country refused to waive jurisdiction when it appeared to the U.S. commanding officer that an accused serviceman would not receive the protection of procedural safeguards outlined in the treaty; and (2) if an American tried in a foreign court actually did not receive his procedural rights. The subcommittee stated last July that the Defense Department never had reported a case in the first category. The single case reported in the second category, in August 1954, concerned failure of a French court to confront the accused with witnesses; in that case the French Ministry of Justice remitted the fine imposed and took action to prevent recurrence of similar procedural errors.

The subcommittee said its information indicated that Americans in foreign prisons were being treated fairly and their needs "satisfactorily met with regard to food and clothing, religious services, medical care, and work and recreation"; there was "no evidence of abuse or mistreatment." Maj. Gen. George W. Hickman, Jr., Judge Advocate General of the Army, testified at the Apr. 9, 1957, hearing that American observers visited U.S. personnel confined in foreign prisons at least once a month. If substandard conditions are found, and corrective action cannot be agreed upon, the facts must be referred to the American diplomatic mission for action, but no such case has arisen.

Gen. Hickman stated that a thorough investigation of charges of mistreatment of Americans in Japanese prisons, contained in an article by Rep. Frank T. Bow (R., Ohio) in the January 1957 *American Legion Magazine*, had shown that the allegations were "not well founded." The report of the investigation related that all Americans sentenced to prison in Japan since December 1955 had been confined in Yokosuka prison, and that 36 of the 38 Americans confined on Feb. 1, 1957, were housed there. A section of the prison, which is the only one in Japan with central heating, has been set aside exclusively for Americans; they are served western-type food prepared by one or more of their number detailed as cooks.

CALLS FOR ABROGATION; PERTINENT QUESTIONS OF LAW

Despite expressions of general satisfaction with operation of the status-of-forces agreements, efforts to modify or abrogate the agreements have been made regularly in Congress and abrogation has been demanded by the Amer-

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ican Legion.¹⁸ When the Senate ratified the NATO status-of-forces treaty in 1953, Sen. John W. Bricker (R-Ohio) sought unsuccessfully to attach a reservation forbidding trial of U.S. military personnel in foreign courts. During the 1955 session of Congress the House approved but later abandoned a proposal by Rep. Bow to bar assignment of additional troops to any country exercising criminal jurisdiction over American military personnel; the Senate rejected a similar proposal by Sen. William E. Jenner (R-Ind.) and the House a proposal by Rep. Hamer H. Budge (R-Ida.) to withhold American aid from countries not waiving their rights under status-of-forces agreements.

The House in 1956 rejected a rider to the foreign aid bill, offered by Bow, setting forth "the view of Congress" that the United States should have exclusive criminal jurisdiction over its military personnel abroad. A change of sentiment this year, evidently brought about by protests over the Girard case, resulted in House Foreign Affairs Committee approval, by a vote of 18 to 8 on June 27, of a joint resolution by Bow directing the President to renegotiate the status-of-forces agreements to enable the United States to retain exclusive criminal jurisdiction over its forces abroad; failing that, the resolution would have the President rescind the agreements.¹⁹

It seems to be widely believed that rights of American citizens have been put in jeopardy by the status-of-forces agreements and that U.S. military personnel accused of criminal acts overseas would automatically become subject to court-martial jurisdiction if the agreements were rescinded. Deputy Under Secretary of State Robert Murphy attempted to correct that impression in testimony before the House Foreign Affairs Committee on July 19, 1955. Observing that "somehow the idea arose that the [NATO status-of-forces] treaty gave foreign governments . . . criminal jurisdiction" over Americans, Murphy said:

This idea seems to be based on the false premise that the soldiers of one country who are stationed in another country normally

¹⁸ The Legion's 1956 convention urged Congress to rescind the agreements. A resolution adopted by the organization's national executive committee in 1955 asserted that American servicemen overseas charged with "crimes of whatever nature" should be subject only to court-martial trials.

¹⁹ Art. XIX of the NATO status-of-forces treaty provides that any contracting party may denounce the agreement "after the expiration of four years from the date on which the agreement comes into force," which was Aug. 23, 1953; a denunciation takes effect one year after formal notification has been given. The treaty makes no provision for denunciation of single articles; only Art. VII is concerned with criminal jurisdiction over military personnel.

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remain under the exclusive jurisdiction of their commanders and are not subject to local laws. . . . The governments of allied countries . . . certainly do not recognize legal doctrines like that . . . They are sovereign nations. As such, they have criminal jurisdiction over every individual accused of offenses within their boundaries—whether soldier or civilian, whether citizen or alien—unless they voluntarily choose to waive this jurisdiction.

Under long-standing custom they have waived it in the case of certain diplomatic officials. Under wartime conditions, they have sometimes waived it with respect to allied military personnel. Under the status-of-forces agreement they have waived a considerable part of their jurisdiction with respect to allied soldiers stationed in their country in peacetime. But the choice always lies with the sovereign host government. If it does not waive its jurisdiction, or modify it, it retains jurisdiction, and this applies to soldiers as well as to tourists and businessmen who are visiting its country.

An authority on international law, the late Charles Cheney Hyde, wrote that "Strong grounds of convenience and necessity prevent the exercise of jurisdiction over a foreign organized military force which, with the consent of the territorial sovereign, enters its domain." Hyde made reference to Chief Justice Marshall's opinion in the *Schooner Exchange* case,²⁰ where Marshall said that a grant of free passage implied a waiver of jurisdiction over troops during their passage. The case might be considered different for troops who enter and remain. In any event, as Hyde pointed out, Marshall "adverted to the exclusive and absolute jurisdiction of a state within its own territory" and "declared that any restriction thereof was to be derived from the nation's consent," whether express or implied.²¹

PROBABLE CAUSES OF OUTCRY OVER GIRARD CASE

Until the Girard case came along, the American public had shown little concern about, or even interest in, operation of the status-of-forces agreements. When a Japanese court sentenced an American serviceman to death last March, the case received little attention in the press, possibly because the crime was murder and the offender apparently a hardened criminal.²² Most sentences of Americans in foreign courts have been lighter than what might have been expected from a court-martial. The outcry over the

²⁰ *Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812).

²¹ Charles Cheney Hyde, *International Law* (Vol. I 1922), pp. 432-441. Hyde said, on the same subject, that "Officers and crews of foreign vessels of war, who commit offenses while ashore, are generally subject to local prosecution."

²² Already under U.S. Army life sentence for murder, he was convicted with a Japanese girl friend of robbing and killing a Japanese woman and setting fire to her home. The Japanese prosecution, which had asked a life sentence rather than hanging, on May 30 requested a new trial.

Girard case seems to have been caused by genuine differences of opinion over whether an unauthorized act by Girard while on duty constituted action "in the performance of official duty"; by the fact that the U.S. government gave way after initially contesting the Japanese position; and by the further fact that Girard apparently had no intention of inflicting mortal injury when he fired empty shell cases in the direction of scavenging Japanese civilians.

Means of Combating Anti-Americanism

CUTTING DOWN the size of military and civilian contingents overseas is an obvious way to ease the tensions which provoke anti-American incidents and which sometimes stir up home protests of a kind to intensify international friction. Evidence that the Eisenhower administration had begun to think the time was at hand when American forces abroad could be reduced, without damage to free world interests, was given shortly after the rioting in Formosa. Secretary Dulles said at his news conference on May 30 that a study had been under way for some months on "the question as to the extent to which we really need as much territory, or area, as we now use for bases—whether we actually need as many troops as we have there." Defense Secretary Wilson had told the Senate Foreign Relations Committee the day before that it was hoped to trim the personnel of military assistance advisory groups in foreign countries by 12 per cent in the coming year.

Dramatic confirmation of the government's wish to reduce its military establishments in foreign countries came at the conclusion of Japanese Premier Kishi's recent visit to Washington. The joint communique issued by the President and the Premier, June 21, announced that the United States planned prompt withdrawal of all its ground combat forces from Japan and progressive cuts in other units there as Japan strengthened its own defense force.²³

Similar opportunities for paring American troop strength should arise in Europe as Germany, where the United States has several hundred thousand men—more than in any other

²³ Dispatches from Tokyo estimated that around 15,000 U.S. troops would be withdrawn now.

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country—builds up its own armed forces. If the time arrives when France can bring home some of the troops in Algeria which used to belong to the NATO shield against invasion, the need for American troops on the continent may be further reduced. President Eisenhower said at his news conference June 26 that there were no definite plans for withdrawing forces from any country except Japan, but that with the redesigning of the armed services currently in progress, increased fire-power probably would take the place of some of the military personnel overseas. It may be supposed also that developments in the missile field will eventually have the same result.

Wherever troops remain overseas in large numbers the armed forces will endeavor, in the future as in the past, to smooth their contacts with local populations. Troop information and education programs seek to give servicemen a thorough understanding of why they have been sent abroad; to impress upon them that they represent the United States and that their actions and attitudes will have much to do with shaping the feelings of foreigners toward this country; and to inform them as thoroughly as possible about the nation in which they are stationed and the reasons for differences between its customs and American customs. In addition, various specific projects designed to foster good feeling between civilians and troops are carried on under community relations programs.

LONG-TERM MEASURES MAKING FOR IMPROVED RELATIONS

Expansion of existing programs for exchange—between the United States and foreign countries—of teachers, students, dramatic and musical presentations, and prominent persons in a variety of fields would spread knowledge of this country's cultural accomplishments more widely and, by so doing, might help to counteract some of the factors which produce anti-Americanism. A Tokyo-born political science professor at Ohio State University has written, for example, that "American technology and American wealth are so spectacular that the Japanese . . . can see little else and think of American civilization as solely a gadget civilization dominated by materialistic values." Such stock impressions were not much changed by "the young American G.I.'s who swarmed over Japan," but "Increasingly frequent visits of American symphony orchestras, scholars, men of letters, and other representatives of the less-pub-

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licized aspects of American culture are proving to be an eye-opener to the Japanese."²⁴

As countries like Japan regain economic strength, and newly independent but less advanced countries progress out of the backward stage, the self-confidence that goes with economic health and accomplishment may make their people more tolerant toward foreigners. In that connection, provisions of the pending Mutual Security bill to put foreign economic aid almost entirely on a loan rather than grant basis will, if finally approved, contribute to the self-respect of aid recipients; people forced to accept help in time of need may be sincerely grateful, but resentment at being dependent on others sometimes shows itself in ill feeling toward the benefactor.

These are slow-working, long-term means of combating anti-Americanism. They are not likely to be of much service in preventing the kind of incidents that occur from time to time in areas where American troops are stationed. Little can be done to make any people happy about a large and semi-permanent peacetime influx of foreign soldiers. The situation may be improved, however, by persistent striving for understanding on both sides and by constant efforts to anticipate and so far as possible avoid the actions or decisions which almost inevitably will arouse popular animosity.

²⁴ Kazuo Kawaii, "Our Gadget Civilization: A Japanese View," *Current History*, December 1956, pp. 341-342. See "Educational Exchange," *E.R.R.*, Vol. II 1956, pp. 451-468.

